

MACHAT & ASSOCIATES, P.C.
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1 each of them, in connection with the commercial use and exploitation of trademarks
 2 in violation of the Lanham Act.

3 2. This action arises under the Trademark Laws of the United States,
 4 including particularly, Sections 32 and 43 of the Lanham Act, 15 U.S.C. §§ 1114
 5 and 1125. Jurisdiction is conferred on this Court by 15 U.S.C. Section 1121(a), by
 6 28 U.S.C. Section 1338(a), in that this case arises under the Trademark Laws of the
 7 United States, 15 U.S.C. Sections 1051, *et seq.*, and by principles of pendent
 8 jurisdiction. Venue is proper in this District under 28 U.S.C. §§ 1391 (b) and (c) as
 9 Defendants transact business in Los Angeles County, California, and a substantial
 10 part of the events or omissions giving rise to the claim occurred within this District.

11 II. THE PARTIES

12
 13
 14 3. Plaintiff PETER BECKETT resides in Los Angeles County,
 15 California.

16 4. Defendant HSN, Inc., (“Home Shopping Network”) is upon
 17 information and belief a Delaware Corporation doing business throughout the
 18 United States, including the county of Los Angeles.

19 5. Defendant Guitar Monkey Entertainment, Inc. (“Guitar Monkey”) is,
 20 upon information and belief, a Tennessee Corporation that operates throughout the
 21 United States, including throughout Los Angeles County, California.

22 6. Defendant Keith Urban is a singer songwriter guitarist entrepreneur
 23 and music competition judge. Upon information and belief, defendant Keith Urban
 24 is the principal owner of defendant Guitar Monkey and the prime mover
 25 responsible for the torts described herein. Upon information and belief, defendant
 26 Keith Urban regularly travels to Los Angeles County for business.

27 7. Plaintiff is informed and believes and thereon alleges that each of the
 28 named Defendants in this case were the agents, servants, employees and/or

1 attorneys of their co-Defendants, and in doing the things hereinafter alleged were
2 acting within the course and scope of their authority as those agents, servants,
3 employees and/or attorneys, and with the permission and consent of their
4 co-Defendants, and are therefore jointly and severally liable.

7 **III. FACTS GIVING RISE TO THIS ACTION**

8
9 8. Plaintiff Peter Beckett is a rock singer songwriter guitarist and has
10 recorded popular hits and performed those popular hits as PLAYER. Peter
11 Beckett's band PLAYER is most well known for the song, "Baby Come Back"
12 written by Peter Beckett and JC Crowley in 1977. By 1978 "Baby Come Back"
13 became an international hit, reaching number one in the Billboard Charts for three
14 weeks in January 1978. The song catapulted PLAYER to worldwide fame, and
15 Peter Beckett went on performing as PLAYER throughout the world playing in
16 large music venues headlining and co-headlining with major bands such as Heart
17 and Eric Clapton. Peter Beckett's PLAYER went on to have other hits besides
18 "Baby Come Back", and the songs recorded and performed by Peter Beckett's
19 PLAYER continue to be played to this day, appearing in commercials, on television
20 shows and movies, and are played frequently on radio stations. As a result the
21 name PLAYER has become well known throughout the world as a Rock Band.

22 9. In April of 2014, Peter Beckett filed a trademark application for
23 PLAYER in international classes 009 and 041 for audio and video recordings
24 featuring music and artistic performances by a rock band, and Entertainment
25 services in the nature of live audio performances by a rock band, respectively.

26 10. On November 18, 2014, the United States Patent & Trademark Office
27 granted Peter Beckett trademark registration number 4640664 for his mark
28 PLAYER.

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11. Defendant Keith Urban is a singer songwriter guitarist famous for songs such as “Stupid Boy”, “But for the Grace of God”, “Once in a Lifetime”, and “Sweet Thing.” Defendant Keith Urban is also a Judge on American Idol.

12. Approximately one month after Peter Beckett filed his trademark application for his world famous mark PLAYER, in May of 2014, defendant Guitar Monkey filed three trademark applications for KEITH URBAN PLAYER in international classes 009, 015 and 041 for prerecorded electronic music featuring instructions on playing guitars, for acoustic and electric guitars and for Entertainment services in the nature of television programming whereby viewers are informed of various goods that can be purchased by the viewer, respectively.

13. Upon information and belief defendant Guitar Monkey filed for the aforementioned trademark registrations upon the instructions and behest of defendants Keith Urban and Home Shopping Network shortly after the airing of an episode of NBC’s daytime soap “General Hospital” in which Peter Beckett’s PLAYER was written into the script as a central element and in which Peter Beckett’s PLAYER performed the PLAYER song “Baby Come Back.”

14. Upon information and belief, one of the defendants, on behalf of all the defendants, purchased a web address of: PlayerbyKeithUrban.com on or about April 18, 2014.

15. The website PlayerbyKeithUrban.com is an ecommerce store that sells a guitar line of products including a guitar learning kit that touts its ability to teach consumers how to play 30 songs in as little as 30 days. The website prominently features images of defendant Keith Urban playing a guitar and promoting his guitar line of products. The website also prominently brands the kit as PLAYER and/or PLAYER BY KEITH URBAN.

16. The website PlayerbyKeithUrban.com appears to be controlled by defendant Home Shopping Network. The copyright notice on the footer of the website says copyright 2015 HSN, Inc.

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1 17. In December of 2014, defendant Home Shopping Network began
2 selling and advertising the infringing PLAYER BY KEITH URBAN on television
3 and possibly elsewhere.

4 18. Upon information and belief, defendants have sold more than One
5 Million Dollars worth of the infringing PLAYER BY KEITH URBAN product via
6 advertisements using Plaintiff Peter Beckett's mark PLAYER.

7 19. Upon information and belief, Plaintiff alleges that originally when
8 defendants began selling their guitar line of products, the original name for it was
9 simply URBAN and/or LIGHT THE FUSE and/or PHOENIX or some combination
10 of these names. Upon information and belief, defendants sold approximately
11 40,000 units of these systems under these alternative names, but defendants wanted
12 to sell even more.

13 20. Upon information and belief, Plaintiff alleges that each of the
14 defendants knew of Plaintiff's band named PLAYER; they each had heard the
15 PLAYER branded recording of "Baby Come Back" numerous times over and over;
16 and they each decided to go ahead and change the name of their guitar line and
17 guitar learning package to PLAYER in order to sell more units. Defendants went
18 forward with their plans to advertise, market and sell their infringing product
19 bearing the word PLAYER, completely disregarding the rights Plaintiff Peter
20 Beckett had built up in the mark PLAYER and disregarding the hard work and
21 sweat Plaintiff put into creating his mark PLAYER. Defendants simply didn't care
22 if they blurred or diluted or tarnished or infringed upon Plaintiff's PLAYER
23 trademark that Plaintiff had worked so hard to create goodwill in over many years.

24 21. If defendants are not stopped from marketing guitar learning kits or
25 guitars or other musical type instruments with the name PLAYER, then consumers
26 will be confused as to the source of origin of defendants' infringing product and
27 Plaintiff's music and music services. If defendants are not stopped from marketing
28 products using PLAYER as a trademark, defendants will continue to harm the

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1 reputation and good will built up by Plaintiff Peter Beckett in PLAYER, making it
 2 more difficult for him to tour and sell records.

3 22. Also, if defendants are not stopped from marketing products under
 4 the name PLAYER, it is likely that consumers will become confused about the
 5 source and origin of Plaintiff's music products and services, and mistakenly
 6 conclude that Plaintiff's products and services are produced by or otherwise
 7 associated with Defendant Keith Urban, whose name appears in conjunction with
 8 Plaintiffs' brand name PLAYER. If defendants are not stopped, one day
 9 consumers may come to believe that "Baby Come Back" was written and
 10 performed by defendant Keith Urban or somehow associated with defendant Keith
 11 Urban instead of Plaintiff Peter Beckett.

13 COUNT I

14 VIOLATION OF LANHAM ACT 15 U.S.C. §1114

15
 16 23. Plaintiff repeats each allegation contained in paragraphs 1 through
 17 22 as though set forth here at length.

18 24. Defendants have committed trademark infringement of Plaintiff's
 19 trademarks in their deceptive marketing of defendants guitar line of products
 20 (including their guitar learning kit) using the name PLAYER.

21 25. Defendants have induced others to infringe Plaintiff's trademark and
 22 trade name.

23 26. Defendants have acted with bad intent and culpably in selecting
 24 using, and/or approving of the use of Plaintiff's PLAYER trademark in the
 25 distribution, marketing, promotion, advertisement, offering for sale, and/or sale of
 26 goods and services.

27 27. Without the knowledge or consent of Plaintiffs, Defendants have
 28 marketed and sold in interstate commerce, and in commerce substantially affecting

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1 interstate commerce, guitars and/or guitar or music accessory products branded
2 under the name PLAYER, and continue to do so. Defendants have promoted,
3 advertised, offered for sale, and/or sold, guitars and/or guitar or music accessory
4 products using the PLAYER mark through persons not authorized, employed by, or
5 associated in any way with Plaintiff and have used the aforementioned trade name
6 and trademark as false designation and false representation for guitars, guitar
7 accessories and/or music related products.

8 28. None of the activities complained of in this complaint have been
9 authorized by Plaintiff, and such unauthorized use by Defendants of Plaintiff's
10 trademarks and/or trade names in interstate commerce, commerce substantially
11 affecting interstate commerce in this district, and elsewhere throughout the United
12 States, constitutes infringement and an inducement to infringe Plaintiff's
13 trademarks and/or trade names, and such activities are likely to cause confusion,
14 mistakes, and to deceive the public at large.

15 29. Upon information and belief, Defendants have acted with the
16 unlawful purpose of:

- 17 a. Improperly taking advantage of the valuable goodwill belonging to
18 Plaintiff;
- 19 b. Soliciting Plaintiff's fans and/or potential fans, attempting to sell,
20 and selling to such fans and potential fans, a guitar line of products
21 (including a guitar learning kit) under the PLAYER mark through
22 persons not authorized by, employed by, or associated in any way
23 with Plaintiff;
- 24 c. Inducing others to infringe Plaintiff's trademark and trade name;
25 and
- 26 d. Causing the goods of persons not authorized by, employed by, or
27 associated in any way with Plaintiff to be falsely represented as if
28 they were rendered, authorized, sponsored by, endorsed by, or

1 otherwise connected with Plaintiff and its licensed trademarks and
2 trade names.

3 30. Defendants' conduct, as alleged in this complaint, constitutes a
4 violation of 15 U.S.C. § 1114.

5 31. If Defendants are allowed to continue marketing and selling the
6 accused product, Plaintiff will be damaged as alleged in this complaint, and the
7 Defendants will profit thereby. Furthermore, unless the Court permanently enjoins
8 Defendants' conduct as alleged in this complaint, Plaintiff's business, goodwill, and
9 reputation will suffer irreparable injury of an insidious and continuing sort that
10 cannot be adequately calculated and compensated in monetary damages.

11 32. Defendants' aforementioned acts and conduct is being done
12 willfully and with an intent to ride on, and/or step on and demolish, the goodwill
13 Plaintiff has worked hard to develop. Plaintiff is therefore entitled to treble
14 damages arising therefrom, as well as reimbursement of Plaintiff's attorneys' fees
15 and costs.

16 33. The intentional nature of defendants' acts makes this an exceptional
17 case under 15 U.S.C. §1117(a).

18 34. The intentional nature of defendants' acts and conduct makes this a
19 case suitable for an award of Three Times Defendants' profits, an amount believed
20 currently to be well in excess of \$1,000,000.00 and growing.

21
22 **COUNT II**
23 **VIOLATION OF LANHAM ACT 15 U.S.C. §1125(a)**
24 **(Against All Defendants)**

25 35. Plaintiff repeats each allegation contained in paragraphs 1 through 34
26 as though set forth here at length.

27 36. Defendants have engaged in, and continue to engage in, the wrongful
28 exploitation of Plaintiff's registered PLAYER mark.

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37. Defendants' goods are so closely related to Plaintiff's goods and services that the public is likely to be confused, to be deceived, and to erroneously assume that Defendants' marketing and sale of their PLAYER guitar and music related products as packaged, advertised and promoted, are those of Plaintiff, or that Defendants are in some way connected with, sponsored by, or affiliated with Plaintiff, all to Plaintiff's detriment and irreparable damage.

38. Defendants are not affiliated with, connected with, endorsed by, or sponsored by Plaintiff. Furthermore, Plaintiff has not approved any of the goods or services offered or sold by the Defendants.

39. Defendants' conduct has diluted, blurred and tarnished Plaintiff's PLAYER mark.

40. Defendants' aforesaid infringing conduct has been willful and done with an intent to ride on, and/or step on and demolish the goodwill Plaintiff has worked hard to develop. Defendants' aforesaid infringing conduct has been willful and with knowledge that the sale, marketing, advertising, and promotion of their guitar and/or music related products will hurt the prospects of future commercial success of Plaintiff's PLAYER branded music and touring services. Plaintiff is therefore entitled to treble damages arising therefrom, as well as reimbursement of Plaintiff's attorneys' fees and costs.

COUNT III

VIOLATION OF LANHAM ACT 15 U.S.C. §1125(c)

41. Plaintiff repeats each allegation contained in paragraphs 1 through 40 as though set forth here at length.

42. Plaintiff's PLAYER mark is famous and distinctive. Defendants' conduct, as alleged in this complaint, is likely to cause dilution of Plaintiff's famous mark by blurring and/or diluting of Plaintiff's famous mark by tarnishment,

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1 and as such violates 15 U.S.C § 1125(c).

2 43. Plaintiff has been damaged by each of the Defendants' acts as alleged
 3 in this complaint, and each defendant has profited thereby. Furthermore, unless the
 4 Court permanently enjoins Defendants' conduct as alleged in this complaint,
 5 Plaintiffs' business, goodwill, and reputation will suffer irreparable injury of an
 6 insidious and continuing sort that cannot be adequately calculated and compensated
 7 in monetary damages.

8 44. Defendants' aforesaid infringing conduct has been willful and done
 9 with an intent to ride on the goodwill Plaintiff has worked hard to develop.
 10 Plaintiff is therefore entitled to treble damages arising thereof, as well as
 11 reimbursement of his attorneys' fees and costs.

12 13 **COUNT IV**

14 **UNFAIR COMPETITION – COMMON LAW, AND CALIFORNIA** 15 **BUSINESS & PROFESSIONS CODE §§ 17200 et seq.** 16

17 45. Plaintiff repeats each allegation contained in paragraphs 1 through 44
 18 as though set forth herein at length.

19 46. Defendants have engaged in unfair competition perpetrated against
 20 Plaintiff by reason of the conduct alleged herein.

21 47. The unlawful and unfair conduct is injuring the goodwill of Plaintiff.

22 48. Defendants are each liable for the unfair competition, and/or are
 23 liable for aiding and abetting such conduct.

24 49. By this conduct, Plaintiff has directly suffered injuries and each
 25 Defendant has been unjustly enriched.

26 50. Plaintiff is entitled to restitution, the recovery of damages, and the
 27 recovery of the profits earned by Defendants by virtue of their conduct.

28 51. As a consequence of the unfair competition by Defendants, Plaintiff is

1 suffering irreparable injury, by reason of which such conduct should be enjoined.

2 52. Plaintiff is entitled to reasonable attorneys' fees.

3 53. Plaintiff is informed and believes, and on that basis alleges, that the
4 aforementioned conduct of Defendants is willful, oppressive, fraudulent, and
5 malicious, and Plaintiff is therefore entitled to punitive damages.

6
7 **COUNT V**

8 **UNFAIR COMPETITION – COMMON LAW, CALIFORNIA BUSINESS &**
9 **PROFESSIONS CODE §§ 17500 et seq.**

10
11 54. Plaintiff repeats each allegation contained in paragraphs 1 through 53
12 as though set forth herein at length.

13 55. Defendants' use of the trade names and trademarks PLAYER
14 misrepresents the nature, characteristics, identity, and source or sponsorship of
15 Defendants' goods, constitutes aiding and abetting liability for deceptive, untrue,
16 and misleading advertising and therefore constitutes a violation of, inter alia,
17 California Business and Professions Code §§17500 et seq. and California common
18 law.

19 56. Defendants' use of the trade name and trademark PLAYER and related
20 trade dress and trademarks are likely to deceive and will continue to deceive the
21 consuming public. Defendants knew, recklessly disregarded, or reasonably should
22 have known that such packaging, advertising, marketing, and promotion was untrue
23 and/or misleading.

24 57. As a result of the conduct described above, Defendants have been
25 and/or will be unjustly enriched at the expense of Plaintiff and the general public.
26 The interests of the general public and Plaintiff are, therefore, closely related.

27 58. Defendants have been unjustly enriched, among other things, by the
28 receipt of sales revenues from consumers who mistakenly thought that they were

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1 purchasing Plaintiff's PLAYER branded music products or accessories both in
2 California and throughout the world, but instead were purchasing Defendants'
3 goods which are promoted and sold through advertisements that affirmatively
4 misrepresent, either directly or by implication, the nature, characteristics, identity,
5 and source or sponsorship of the goods.

6 59. Pursuant to Business and Professions Code §§ 17203 and 17535,
7 Plaintiff, on behalf of himself and the general public, which is unable effectively to
8 assert its interests, seeks an order of this Court ordering Defendants immediately to
9 cease such support for acts of unfair competition and false advertising, and
10 enjoining Defendants from continuing to import or export, distribute, market,
11 promote, advertise, offer for sale, and sell, Defendants' PLAYER BY KEITH
12 URBAN and/or any good or service that contains any of Plaintiff's trademarks
13 which falsely advertise or conduct business via the unlawful, deceptive, unfair or
14 fraudulent business acts and practices, and the untrue and misleading advertising
15 complained of herein. Plaintiff additionally requests an order disgorging
16 Defendants' ill-gotten gains and restitution of all monies wrongfully acquired by
17 Defendants by means of their support of such acts of unfair competition and false
18 advertising, damages, interest and attorneys' fees.

19
20 WHEREFORE, Plaintiff prays for judgment as follows:
21

22 1. That the Court adjudge and decree that Defendants have falsely
23 designated the origin of certain guitar and/or guitar accessory products as those of
24 Plaintiffs, have made and used false representations in connection with the sale,
25 offering for sale, promotion and advertising of such products, and have unfairly
26 competed with Plaintiffs at common law;

27
28 2. That the Court adjudge and decree that Defendants have infringed

1 Plaintiff's registered trademark PLAYER;

2
3 3. That the Court adjudge and decree that Defendants have infringed
4 upon Plaintiff's common law rights to the mark PLAYER;

5
6 4. That the Court adjudge and decree that Defendants unlawfully diluted,
7 tarnished and diminished Plaintiff's rights in the PLAYER mark;

8
9 5. That the Court permanently enjoin Defendants, their agents, servants,
10 employees, attorneys, and all persons acting in concert or participation with them,
11 or with any of them from:

- 12 a. Using PLAYER or any other word or words which are similar to, or
13 a colorable imitation of, Plaintiff's trade name and mark, either
14 alone, as part of, or together with, any other word or words,
15 trademark, service mark, trade name, or other business or
16 commercial designation in connection with the sale, offering for
17 sale, advertising, and/or promotion of music or music related
18 products or services;
- 19 b. Selling, offering to sell, marketing, distributing, advertising and/or
20 promoting any music or music related product or service with the
21 word PLAYER displayed on the product, its packaging, advertising
22 or promotional materials;
- 23 c. Representing directly or indirectly by words or conduct that any
24 music or music related product or service offered for sale, sold,
25 promoted, or advertised by Defendants, is authorized, sponsored
26 by, endorsed by, or otherwise connected with Plaintiff;
- 27 d. Aiding or abetting in unfair competition against Plaintiff;
- 28 e. Aiding or abetting in false advertising; and

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1 f. Inducing others to engage in any of these aforementioned acts.
2

3 6. That the Court award an amount to be determined at trial but at least
4 an amount equivalent to treble the amount of Defendants' illicit profits or Plaintiff's
5 lost profits, whichever is greater;
6

7 7. That the Court award an additional amount to be determined at trial
8 sufficient to cover the costs of prospective corrective advertising, which amount is
9 requested to be at least ten times the amount of advertising dollars spent by
10 defendants;
11

12 8. That the Court adjudge and decree that the intentional nature of
13 defendants' acts and conduct makes this a case suitable for an award of Three
14 Times Defendants' profits, an amount believed currently to be well in excess of
15 \$1,000,000.00 and growing;
16

17 9. That the Court adjudge and decree that the intentional nature of
18 defendants' acts makes this an exception case under 15 U.S.C §1117(a);
19

20 10. That the Court award Judgment against Defendants for the full costs of
21 this action, including the attorney's fees reasonably incurred by Plaintiff;
22

23 11. That the Court Order such other, further and different relief as the
24 nature of this action may require and as the Court may deem just and proper;
25

26 12. That the Court retain jurisdiction of this action for the purpose of
27 enabling Plaintiff, in his discretion, to apply to this Court at any time for such
28 further orders and directions as may be necessary or appropriate for the

1 interpretation or execution of any Order entered in this action, for the modification
2 of any such Order, for the enforcement of compliance therewith, and/or for the
3 punishment of any violation thereof.

4
5 Respectfully submitted,
6 MACHAT & ASSOCIATES, P.C.

7
8 Dated: February 26, 2015 By: Michael Machat
9 Michael Machat, Esq.
10 Attorney for Plaintiff
11 PETER BECKETT
12

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby requests a trial by jury on all issues raised by the Complaint.
15

16
17 Respectfully submitted,
18 MACHAT & ASSOCIATES, P.C.

19 Dated: February 26, 2015 By: Michael Machat
20 Michael Machat, Esq.
21 Attorney for Plaintiff
22 PETER BECKETT
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